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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/938,884	08/24/2001	Arthur Dale Ericsson	IBRPAT007US	2533

7590 11/12/2003

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PO Box 2174  
Friendswood, TX 77549

EXAMINER
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JONES, DAMERON LEVEST

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 11/12/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Applicati n No.

09/938,884

Applicant(s)

ERICSSON, ARTHUR DALE

Examiner

D. L. Jones

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-- The MAILING DATE of this communication appears n the cover sheet with the c rrespondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 1-9 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-18 is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_. 6) ☐ Other: \_\_\_\_\_

## **ACKNOWLEDGMENTS**

1. The Examiner acknowledges receipt of Paper No. 6, filed 8/26/03, wherein claims 10 and 11 were amended.

**Note:** Claims 1-18 are pending.

## **RESPONSE TO APPLICANT'S ARGUMENTS/AMENDMENTS**

2. The Applicant's arguments filed 8/26/03 (Paper No. 6) to the rejection of claim 10 made by the Examiner under double patenting has been fully considered and deemed persuasive. Therefore, the said rejection is hereby withdrawn.

The Examiner acknowledges the Applicant's response to the restriction requirement being made final. In summary, Applicant asserts that the restriction has not been properly supported since the text pointed to in the specification by the Examiner refers to targets of the composition rather than the characteristics of the composition.

A restriction is deemed proper between a product and process of use if it can be shown that (1) the process of using the product as claimed may be practiced with another materially different product and/or (2) the product as claimed may be used in a materially different process of using that product. Applicant's product (composition of matter) is directed to a conjugate that has a living pathogen targeting organic moiety coupled to a radioisotope. The targeting organic moiety may encompass antibodies, viruses, fungi, bacteria, prions, or any other targeting organic moiety known to man that may be conjugated to a living pathogen. Thus, a multitude of possible products may be used with in a method of treating an infectious disease caused by a living blood-borne

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pathogen in a mammal having similar steps to claim 11, for example. However, the methods that were examined are directed to antibodies (targeting organic moiety) that are radiolabeled. Hence, in the examined claims, the conjugate is a living pathogen-antibody moiety coupled to a radioisotope. Such a moiety is different from a conjugate comprising a living pathogen-virus, living pathogen-prion, living pathogen-bacteria, and so forth. Additionally, it should be noted that separate searches are necessary for each conjugate. Also, prior art anticipating or rendering obvious an antibody conjugate would not necessarily render obvious a virus, etc. unless they are, for example, listed as a Markush grouping. The restriction is still deemed proper.

**WITHDRAWN CLAIMS**

3. Claims 1-9 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention/species.

**ALLOWABLE CLAIMS**

4. Claims 10-18 are allowable for reasons of record in the office action mailed 5/21/03, Paper No. 5.

**OBJECTION TO THE SPECIFICATION**

5. The disclosure is objected to because of the following informalities: On page 1, line 8, the following phrase appears, 'October 30, 1998, now \_\_\_\_\_, and

incorporated by reference herein'. Applicant is respectfully requested to fill in the blank space with the appropriate information.

Appropriate correction is required.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. L. Jones whose telephone number is (703) 308-4640. The examiner can normally be reached on Mon.-Fri., 6:45 a.m. - 3:15 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (703) 308 - 2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.



D. L. Jones  
Primary Examiner  
Art Unit 1616

November 10, 2003